



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

DEC 11 2014

Don Peter, Treasurer  
Kent Roth for Kansas  
Roth Law Office Building  
10 North Main Street  
Ellinwood, KS 6756-1638

RE: MUR 6827  
Kent Roth for Kansas  
Don Peter in his official capacity as treasurer

Dear Mr. Peter:

On May 28, 2014, the Federal Election Commission notified Kent Roth for Kansas and you, in your official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to you at that time. On December 9, 2014, and after considering all the information, the Commission voted to dismiss this matter and closed the file. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

If you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Powers", is written over a horizontal dashed line.

William A. Powers  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Kent Roth for Kansas and Don Peter  
in his official capacity as treasurer

**MUR: 6827**

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Kent Roth for Kansas and Don Peter in his official capacity as treasurer.<sup>1</sup>

Kent Roth for Kansas and Don Peter in his official capacity as treasurer (the "Committee") mailed to John D'Aloia, Jr. (the "Complainant") and at least four others a letter that introduced Roth as a 2014 candidate for Kansas's 1st Congressional District and invited recipients to visit Roth's campaign Facebook page and web site. Roth's correspondence also referenced the Act's contribution limitations and prohibitions, but stated that he was not asking recipients to make a campaign contribution at that time.

Regardless of whether this activity violated the "sale and use" provisions of the Act,<sup>2</sup> based on the circumstances presented in this matter, the Commission exercises its prosecutorial discretion and dismisses the allegations.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Background**

The body of the February 28 letter that Roth sent the Complainant states:

Thank you for the opportunity to invite you to visit Kent Roth Congressional Campaign which is my facebook page in connection with the above campaign for Congress in the first District of Kansas.

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<sup>1</sup> On September 1, 2014, the Act was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

<sup>2</sup> See 52 U.S.C. § 30111(a)(4) (formerly 2 U.S.C. § 438(a)(4)).

I mailed my papers to the Federal Election Commission which makes me a Candidate in a race to defeat Tim Huelskamp in the 2014 Republican Primary Election. The maximum any one person may give per election is two thousand six hundred (\$2,600) dollars. Federal law prohibits corporate, national bank, union, government contractor or foreign national to contribute. However, I am not asking you to make a contribution at this time, but rather to take the time to get to know me.

Please visit my facebook page or web site: kentroth.com making any comments or posts you desire. You are assured of my prompt reply to any questions you may wish to direct to me and both you and the public will have the opportunity to review my reply and be fully informed on the issues. Should you prefer to send questions in writing, please find enclosed a self addressed envelope for your inquiry.<sup>3</sup>

The Complainant asserts that the Committee's letter addressed him as "Captain John D'Aloia, Jr." and "Captain John" — a title he does not use in his community and political activities or on his checks or letterhead.<sup>4</sup> But the Complainant notes that he had used that formulation in a contribution to Roth's opponent, Tim Huelskamp, which Huelskamp's committee disclosed to the Commission as such. The Complaint therefore alleges that the Committee used information obtained from Huelskamp's disclosure reports to distribute the February 28 letter, which it further contends solicited contributions.<sup>5</sup>

The Committee does not deny that it sent the February 28 letter to donors whose names it obtained from the disclosure reports of Huelskamp's committee.<sup>6</sup> Instead, it argues that the Commission should take no action because the letter was an invitation to get to know

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<sup>3</sup> Compl., Exs. 1-5.

<sup>4</sup> Compl. at 1.

<sup>5</sup> *Id.* The Complainant further asserts that at least four other donors to the Huelskamp campaign — Matthew Hickam, Dennis Potter, Alice Steward, and Federal Home Loan Bank of Topeka PAC — received an identical letter from the Committee also addressed exactly how their names were listed in the Huelskamp disclosure reports. *Id.* at 2.

<sup>6</sup> Resp. at 1-2.

the candidate, not a solicitation.<sup>7</sup> The Committee asserts that no contributions resulted from the letter.<sup>8</sup> In addition, the Committee explains that prior to the mailing, Roth had posted to his campaign Facebook page and web site a press release responding to a “defamatory whisper campaign” that eventually was the subject of negative “robo-calls” made to voters in the District and paid for by Kansans for Hueslkamp.<sup>9</sup> The Committee argues that the principal purpose of the February 28 letter was to invite recipients to visit the candidate’s Facebook page and web site to view that response and get to know the candidate.<sup>10</sup>

#### **B. Legal Analysis**

Under the Act and Commission regulations, political committees are required to file reports with the Commission identifying the names and mailing addresses of contributors.<sup>11</sup> All such reports and statements filed with the Commission are available to the public for inspection and copying within 48 hours after receipt.<sup>12</sup> Any information copied from such reports or statements, however, “may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes,” other than using the name and address of a political committee to solicit contributions from that political committee.<sup>13</sup> Under Commission regulations, “soliciting contributions” includes soliciting any type of

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<sup>7</sup> *Id.* at 1.

<sup>8</sup> Resp. at 1. The Commission’s records reflect that no contributors identified in the Hueslkamp disclosure reports contributed to the Committee.

<sup>9</sup> *Id.* at 1-2.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> 52 U.S.C. § 30104(b)(2)(A) and (b)(3)(A) (formerly 2 U.S.C. § 434(b)(2)(A) and (b)(3)(A)); 11 C.F.R. § 104.8(a).

<sup>12</sup> 52 U.S.C. § 30111(a)(4) (formerly 2 U.S.C. § 438(a)(4)).

<sup>13</sup> *Id.*; see also 11 C.F.R. § 104.15(a).

contribution or donation, such as political or charitable contributions.<sup>14</sup> Moreover, in connection with the Commission's regulations concerning non-federal funds, the Commission has explicitly defined "solicit" broadly to include both explicit and implicit suggestions that another person make a contribution.<sup>15</sup>

Based on the record available in this matter, the Commission exercises its prosecutorial discretion and dismisses the allegations that the Committee violated 52 U.S.C. § 30111(a)(4) (formerly 2 U.S.C. § 438(a)(4)). The Committee does not dispute that it copied names from Commission disclosure reports, but it argues that the communication did not solicit contributions. While the February 28 letter states that it is "not asking [recipients] to make a contribution at this time," the letter sets forth information about who can make contributions and in what amounts and invites recipients to review the candidate's Facebook page, which in turn contained several links to the candidate's donation page.<sup>16</sup> The Committee, moreover, spent \$735 on "stamps" on February 26, 2014, possibly the amount spent to send the letter at issue,<sup>17</sup> and Roth withdrew from the race on May 23, 2014 — more than two months before the August 5, 2014 election — while the Committee reports no cash on hand or outstanding debts and filed a Termination Report on June 16, 2014, after being in existence for approximately five months.

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<sup>14</sup> 11 C.F.R. § 104.15(b).

<sup>15</sup> *Id.* § 300.2(m); see *Sorenson v. Sec'y of Treasury*, 475 U.S. 851, 860 (1986) ("The normal rule of statutory construction assumes that identical words used in different parts of the same act are intended to have the same meaning." (internal quotation marks omitted)).

<sup>16</sup> See Compl., Exs. 1-5; see also <http://www.facebook.com/kentrothesquire> (last visited Oct. 16, 2014) (providing links to campaign donation pages in Facebook posts dated December 5 and 7, 2013, and January 4, 11, and 15, 2014).

<sup>17</sup> See 2014 April Quarterly Report at 19 (Apr. 13, 2014).

Regardless of whether the letter may have solicited contributions from its recipients, under these circumstances, the Commission concludes that this matter does not warrant an investigation and dismisses the allegations against Kent Roth for Kansas and Don Peter in his official capacity as treasurer.<sup>18</sup>

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<sup>18</sup> See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (in determining whether to pursue an enforcement action, an agency "must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another . . .").